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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/034,335	12/28/2001	Charles Morell	KCC-14,977	8352

35844 7590 10/08/2003

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EXAMINER

THOMPSON, CAMIE S

ART UNIT PAPER NUMBER

1774

DATE MAILED: 10/08/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/034,335

Applicant(s)

MORELL ET AL.

Examiner

Camie S Thompson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) 17-24 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-16 and 25 is/are rejected.
- 7) ☒ Claim(s) 26 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 5-6.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

## DETAILED ACTION

### *Election/Restrictions*

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-16 and 25-26, drawn to an elastic laminate and disposable garment, classified in class 428, subclass 297.4.
  - II. Claims 17-24, drawn to a method for making a stranded elastic laminate web for a disposable garment, classified in class 442, subclass 394.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions I and II are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case, an elastic strand bond laminate can be made with a neckable nonwoven web.
3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.
4. During a telephone conversation with Roland W. Norris on January 14, 2003 a provisional election was made with traverse to prosecute the invention of Group I, claims 1-16 and 25-26. Applicant in replying to this Office action must make affirmation of this election.

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Claims 17-24 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

5. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

#### ***Claim Objections***

6. Claim 26 is objected to because of the following informalities: Claim 26 is dependent upon claim 17, a non-elected claim. Appropriate correction is required.

#### ***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1-11, 13-16 and 25 are rejected under 35 U.S.C. 102(b) as being anticipated by Quantrille et al., U.S. Patent Number 5,804,286.

Quantrille discloses a composite that can be used for the side panel of a disposal garment such as a diaper, comprising two layers wherein the first layer is a coherent extensible nonwoven web and is laminated to a second layer as per instant claims 1, 14 and 16 (see column 2, lines 44-57

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and column 10, lines 32-39). The reference also discloses that the first layer contains multipolymer fibers with a plurality of bonds bonding the fibers together as per instant claim 1 (see column 2, lines 44-51). It is disclosed in the reference that the first and second layers can be bonded by with or without adhesive as per instant claim 1 (see column 9, lines 4-38). Quantrille discloses that the preferred polymer fibers are isotactic polypropylene and are continuous spunbond fibers as per instant claims 4 and 13 (see column 6, lines 5-24 and column 3, lines 61-68). Column 3, lines 1-21 of the reference discloses that the second layer may be a spunbonded nonwoven web or elastic strands as per instant claims 1, 13 and 15. The reference also discloses that the polymer fibers can include homopolymers and copolymers (see column 4, lines 30-40). Additionally, the reference discloses that the filament can be an elastic block copolymer as per instant claim 6 (see column 8, lines 45-55). Figures 1-4 of the reference disclose that the first web is on the interior facing side of the garment and the second web is on the outer surface of the web as per instant claim 2. The reference also discloses that cross-linked elastomers can be used as the fibers and that the multipolymer fibers may be bicomponent with a sheath/core structure (see column 7, line 63-column 8, lines 9). Also, the reference discloses in column 8, lines 1-68 that the web can contain a combination of spunbonded and meltblown fibers or a combination thereof as per instant claims 10 and 11. The reference also discloses that the fibers can have a number of configurations for the sheath/core structure wherein the elastomers cross-linked with adhesives such as urethanes and rubbers as per instant claims 3, 5 and 8-9 (see column 8, lines 1-68). Lines 28-36 of column 8 of the reference discloses that the second layer has a basis weight of 10 to 40 grams per square meter as per instant claim 13. Column 9, lines 23-30 of the reference disclose that the adhesive can be a hydrocarbon as per instant claim 7.

***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 2 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over

Quantrille et al., U.S. Patent Number 5,804,286 in view of Morman et al., U.S. Patent Number 5,883,028.

Quantrille discloses a composite that can be used for the side panel of a disposal garment such as a diaper, comprising two layers wherein the first layer is a coherent extensible nonwoven web and is laminated to a second layer as per instant claim 1 (see column 2, lines 44-57 and column 10, lines 32-39). Figures 1-4 of the reference disclose that the first web is on the interior facing side of the garment and the second web is on the outer surface of the web as per instant claim 2. Column 3, lines 1-21 of the reference discloses that the second layer may be a spunbonded nonwoven web or elastic strands as per instant claim 1. The reference also discloses that the first layer contains multipolymer fibers with a plurality of bonds bonding the fibers together as per instant claim 1 (see column 2, lines 44-51). It is disclosed in the reference that the first and second layers can be bonded by with or without adhesive as per instant claim 1 (see column 9, lines 4-38). The Quantrille reference does not disclose the basis weight of the first layer as per instant claim 12. The Morman reference teaches a breathable, nonwoven laminate useful for diapers and other disposable products (see column 1, lines 47-63). The Morman reference also discloses that the first layer is a spunbonded polypropylene having a basis weight

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of 0.2 to 8 osy (see column 8, lines 49-63). The basis weight affects the strength of the composite. Discovery of optimum values of a result effective variable involves only routine skill in the art in re Boesch, 617 F2. 2d 272, 205 USPQ 215 (CCPA 1980). Therefore, it would have been obvious to one of ordinary skill in the art to have the basis weight of the first layer be between 0.2 to 8 osy so that the composite material such as a diaper can withstand rigorous movement.

Any inquiry concerning this communication or earlier communication from the examiner should be directed to Camie S. Thompson whose telephone number is (703) 305-4488. The examiner can normally be reached on Monday through Friday from 7:30 am to 4:00 pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cynthia H. Kelly, can be reached at (703) 308-0449. The fax phone numbers for the Group are (703) 872-9310 {before finals} and (703) 872-9311 {after finals}.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0661.

CYNTHIA H. KELLY  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 1700

